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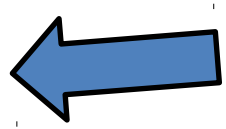
Small Business and Subcontracting

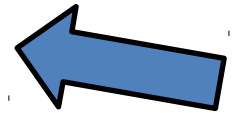
Foundational Learning

Workflow Learning

Performance Learning

Subcontracting for Small Business





Acquisitions and Small Business Professionals

Regulatory Guidance

- DoD Directive (DoDD) 5000.01, The Defense Acquisition System
- DoDI 5000.02, Operation of the Defense Acquisition System
- DoDD 4205.01, DoD Small Business Programs
- Federal Acquisition Regulation

Small Business Professionals are integral members of the acquisition team and need to be involved in acquisition planning early!

52.219-8 -- Utilization of Small Business Concerns

(b) It is the policy of the United States that small business concerns, (including socioeconomic concerns) shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance.

Note: This policy applies to other than small businesses *and* small businesses

Small Business Consideration

- When should small business be considered in acquisition planning?
  - As soon as need is identified and market research begins - FAR 10.001(a)(2)
  - Market research is conducted to determine if:
    - Commercial items are available
    - Extent of competition
    - Small businesses are capable of performing as prime contractors or

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Subcontracting Plan Requirement

FAR 19.702 requires that all negotiated and sealed bid acquisitions that are expected to exceed $700,000 ($1.5 million for construction) and that has subcontracting possibilities, shall require the apparently successful offeror/ bidder selected for award to submit an acceptable subcontracting plan (see FAR 19.702(b) for exceptions).

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Subcontracting Plan Considerations

1. Requiring submission of the subcontracting plan with the bids or proposals (vice any other time before contract award) *Note: It is customary for the Contracting Officer to require offerors/bidders to submit a subcontracting plan with its offer/bid, though FAR permits its submission within the (any) time limit prescribed by the contracting officer before contract award.*
2. Determining (based on the market research), desired acceptable subcontracting goals
3. Determining (based on the market research), anticipated areas suitable for subcontracting

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Evaluation of Small Business Participation Requirement

1. FAR 15.304(c)(5) requires evaluation of small business participation for solicitations involving *bundling*.
2. DFARS 215.304(c) requires *evaluation of* small business participation in other than LPTA source selections whenever a subcontracting plan is required.

Note: Though evaluation of small business participation is not required for LPTA source selections, it is permissible. See the Source Selection Procedures Appendix C (C.4)

Evaluation of Small Business Participation Considerations

1. Evaluation criteria
    1. DFARS PGI 215.304 for example factors/subfactors
2. Ways to evaluate
    1. Department of Defense Source Selection Procedures (section 2.3.4.2.3)
3. Options for rating
    1. Department of Defense Source Selection Procedures (section 3.1.4.1)
4. Reporting

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Assessing Subcontracting Plans
Evaluating Small Business Participation
The differences

FAR Subpart 19.7	DFAR Subpart 215.3
Plan must be negotiated and determined acceptable by the contracting officer	Evaluation of overall SB (including socioeconomic categories) participation
Requires 11 items in accordance with FAR 19.704	Requires evaluation of specific criteria (factors or substantial subfactors)
Based on total ***planned*** subcontracted dollars	May be based on total planned subcontracted dollars ***or*** the value of the total acquisition (total contract value)
Does not apply to SB	Applies to *all* offerors (including SBs)

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Assessing Subcontracting Plans
Evaluating Small Business Participation
The differences

Assessment of a subcontracting plan and evaluation of small business participation are two separate yet related areas; they are treated differently in the source selection

DFARS 215.304 (c)(i)(B) states that proposals addressing the extent of small business performance ***shall be separate*** from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and shall be structured to allow for consideration of offers from small

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Separation Achieved

Subcontracting Plan

Eleven elements
IAW FAR 19.7 and 52.219-9

Small Business Participation Commitment Document (Small Business Participation Plan)

- Names of subcontractors to be utilized and the products/services they are to provide
- Describe type and complexity of products/services to be provided
- State extent of utilization quantitatively
- Other as necessary

A point to ponder – Using the phrase Small Business Participation Commitment Document vs. "plan" helps to not confuse it with the subcontracting plan.

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Subcontracting Plans
Small Business Participation Commitment Document (SBPCD)
The similarities

- Should compliment each other
  - in general, provisions of the subcontracting plan that coincide with the SBPCD should be consistent
    - planned small business subcontracting dollars of the subcontracting plan should be the same as the extent of utilization quantitatively in the SBPCD
      - Subcontracting percentages may be different if SBPCD proposal based on total value of acquisition
    - Type of products/services to be subcontracted should be the same
- Both should be contractually binding

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Evaluation of Small Business Participation Demystified

Consideration # 1 – Determine the evaluation criteria

(DFARS PGI 215.304 Factors and Substantial Subfactors)

1. Extent to which SB firms are specifically identified in proposals
2. Extent of commitment to use such firms
3. Complexity and variety of work
4. Realism of the proposal
5. Past performance of complying with subcontracting requirements
6. Extent of participation of SB firms in terms of the value of the total acquisition

Other criteria may be used as appropriate

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Consideration # 2 – Determine which way small business participation will be evaluated

(Department of Defense Source Selection Procedures section 2.3.4.2.3 & 3.1.4.2)

Evaluation of small business participation may be accomplished in one of three ways:

One - By establishing a separate small business participation evaluation factor

Example:

Section M – Evaluation Factors

Factor 1 Technical

Factor 2 Past Performance

Factor 3 Small Business Participation

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Two - By establishing a small business participation subfactor under the technical factor

Example:

Section M – Evaluation Factors

Factor 1 Technical

Subfactor a. Management Approach

Subfactor b. Small Business Participation

or

Three - By considering small business participation within the evaluation of a technical subfactor

Example:

Section M – Evaluation Factors

Factor 1 Technical

Subfactor a. Management Approach

i. Consideration of small business participation

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Consideration #2 – Determining which way small business participation will be evaluated

A point to ponder - Though it is permissible to evaluate small business participation at a subfactor or lower level, to be the most meaningful, the greater the opportunity for utilization of small businesses, small business participation should be evaluated at the factor level.

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Consideration # 3 – Select an appropriate option for rating small business participation

(Department of Defense Source Selection Procedures section 3.1.4.1)

The appropriate options for rating small business participation is dependent upon the way it is evaluated

1. When evaluating small business participation *as a* ***separate evaluation factor***
   - Use the ratings acceptable and unacceptable only **or**
   - Utilize all ratings outlined in Table 6, of the source selection procedures.

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2. Evaluating small business participation as a ***subfactor under the technical factor***

- Use the ratings acceptable and unacceptable only **or**
- Utilize all ratings outlined in Table 6 of the source selection procedures.

3. Evaluating small business participation ***within the evaluation of one of the technical subfactors***.

When small business participation is evaluated within the evaluation of one of the technical subfactors, **a separate small business rating is not applied**. However, the small business participation shall be considered in determining the appropriate technical rating to be applied.

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Consideration # 4 – Establish Small Business Participation (Utilization) Reporting Requirements

- No regulatory requirement to require contractor to report subcontracting performance other than through eSRS
  - Reporting IAW subcontracting plans
- Why require other than eSRS reporting?
  - Enhances enforceability of the SBPCD
  - Obtain information not required by eSRS reporting
  - Aids determination of good faith effort
    - Supports assessing liquidated damages
- The other than eSRS reporting requirements
  - Include in the solicitation as a special contract requirement (Section H)
  - Tailor to what is appropriate for the acquisition
  - Note inclusion in Performance Requirements Summary and performance summary documentation

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Small Business Participation and Source Selection

To underscore the significance of small business participation, a good solicitation and source selection evaluation will:

(a) Emphasize how the assessment of the subcontracting plan IAW FAR 19.7 is different from the evaluation of small business participation

(b) Explain how offers from small business prime offeror's must be structured and how they will be evaluated

(c) State that evaluation of small business participation applies to Comprehensive Subcontracting Plan participants

(d) If appropriate for the acquisition, state a baseline small business minimum quantitative requirement (MQR) (not a "goal") for small business (and socioeconomic categories as well if appropriate) based on market research

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(e) State if small business participation is based on total contract value (TCV). TCV should be defined and if used, explain how percentages and dollars should be stated in the subcontracting plan (if a plan is required)

(f) Explain how offers will be rated to include a requirement for other-than-small business offerors to receive a higher evaluation rating for exceeding the baseline MQR

(g) Evaluate past performance as it relates to small business utilization

(h) Determine the realism of the proposed utilization of small businesses

(i) Require all offerors to submit periodic reports (monthly, quarterly) on their small business utilization for the contract.

About Evaluating Small Business Past Performance

Evaluation of Past Performance Requirement

- FAR 15.304 - past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold
- DFARS 215.305(a)(2) requires that in DoD solicitations that include the clauses at FAR 52.219-8 Utilization of Small Business Concerns and FAR 52.219-9 Small Business Subcontracting Plan, the past performance of offerors in complying with the requirements of those clauses shall be evaluated.

About Evaluating Small Business Past Performance

A past performance evaluation is required for acquisitions meeting the thresholds established in accordance with Director of Defense Procurement and Policy Class Deviation Past Performance Evaluation Thresholds and Reporting 2013-O0018 dated September 24, 2013.

For evaluation of small business participation purposes:

- May include with overall past performance when required based on thresholds
- May evaluate separately
  - When required overall based on thresholds
  - When not required based on thresholds

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Small Business Past Performance - What to evaluate

Examples of elements of small business utilization past performance (compliance with FAR 52.219-8) to evaluate includes:

1) Actual prior use of small businesses
2) Use of small businesses in the socioeconomic categories
3) Types of work performed by small businesses
4) Complexity of the work performed by small businesses
5) Reporting of small business performance in the Contractor Performance Assessment Reporting System (CPARS)
6) History of prompt payments to small businesses

Note: Evaluation of small business past performance is not limited to evaluation of performance of other-than-small businesses only, but it includes the evaluation of small businesses' past performance of utilizing fellow small businesses as well.

Small Business Past Performance - What to evaluate

Additionally, when a subcontracting plan was required, evaluation of small business past performance (compliance with FAR 52.219-9) should include an evaluation of:

1) Performance against subcontracting goals.
2) Compliance with the subcontracting plan in general.

Subcontracting Summary

- Small Business Professionals (including SBA PCRs) need to be involved early in acquisition planning
- Development of the subcontracting strategy for an acquisition is a team effort
- Subcontracting Plans are assessed and negotiated as a basis for contract award
- Small Business Participation is evaluated IAW criteria for source selection
- Small Business Past Performance is required to be evaluated when past performance is required to be evaluated and may be evaluated otherwise

Resource

DoD OSBP

Subcontracting POCs

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